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E-FILING

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Ernst Katchour

Plaintiff

-vs-

C08 00270

Robert S. Mueller, III, Director, Federal Bureau of
Investigation, Michael Chertoff, Secretary of
Department of Homeland Security, Francis D. Siciliano, Field Office
Immigration Services, U.S. Citizenship and Immigration Services

Defendants.

COMPLAINT FOR RELIEF IN
THE NATURE OF MANDAMUS
U.S.C. §1427

o. A47 525 375

**A paper copy of this Complaint
was filed with the court on
January 15, 2008**

**The following ten pages are a
complete e-copy of that filing.**

Plaintiff by his

1. Plaintiff Ernst K

within the jurisd

§1427.

ed States who resides

s under 8 U.S.C.

2. Defendant Robert S. Mueller, III is the Director of the Federal Bureau of Investigation,
an agency of the United States Government, and he is sued in his official capacity.
Defendant Michael Chertoff is the Secretary of the Department of Homeland Security
and is sued herein in his official capacity. Defendant Francis D. Siciliano is the Field

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Ernst Katchour)	
)	
Plaintiff)	
-vs-)	
)	
Robert S. Mueller, III, Director, Federal Bureau of)	
Investigation, Michael Chertoff, Secretary of)	COMPLAINT FOR RELIEF IN
Department of Homeland Security, and Frank D.)	THE NATURE OF MANDAMUS
Siciliano, Field Office Director, U.S. Citizenship and)	UNDER 8 U.S.C. §1427
Immigration Services, Rosemary Melville, District Director)	
U.S. Citizenship and Immigration Services)	
)	USCIS No. A47 525 375
Defendants.)	

Plaintiff by his attorney, is complaining of Defendants as follows:

1. Plaintiff Ernst Katchour, is a lawful permanent resident of the United States who resides within the jurisdiction of this Court. Plaintiff's claim to relief arises under 8 U.S.C. §1427.
2. Defendant Robert S. Mueller, III is the Director of the Federal Bureau of Investigation, an agency of the United States Government, and he is sued in his official capacity. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security and is sued herein in his official capacity. Defendant Francis D. Siciliano is the Field

1 Office Director of the San Jose USCIS office, and is sued in his official capacity.

2 Rosemary Melville is the District Director of the USCIS at San Francisco, California,
3 and is sued in her official capacity. Plaintiff alleges that Defendants have a role in the
4 adjudication of the application for naturalization.

5
6 3. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1331, 28 U.S.C. 1361, 28
7 U.S.C. 1651 and 5 U.S.C. 701 et seq., and relief is requested pursuant to said statutes
8 and 28 U.S.C. 2201.

9 4. On or about November 5, 2005, Plaintiff applied for naturalization with the USCIS
10 California Service Center (CSC) in Laguna Niguel, California. *See, Group Exhibit A,*
11 *Notice of Receipt.*

12
13 5. On or about February 3, 2006, Plaintiff was fingerprinted for his naturalization
14 application in San Jose, California. *See, Group Exhibit A, Notice of Biometrics*
15 *Appointment, stamped as completed on February 3, 2006.*

16 6. On April 10, 2006, Plaintiff had his naturalization interview at the San Jose USCIS
17 office. However, Plaintiff's application has not yet been adjudicated pending a FBI
18 name check. *See, Group Exhibit A, Notice of Interview Results/Form N-562, dated April*
19 *10, 2006.*

20
21 7. To date, Plaintiff's FBI name check is not completed and Plaintiff's naturalization
22 application remains pending. *See, Group Exhibit A, Form Letter by USCIS to Plaintiff,*
23 *dated January 17, 2007; Form Letter by USCIS to Plaintiff, dated January 18, 2007;*
24 *Letter by Morgan Galli, Constituent Services Representative, United States Congress,*
25 *dated October 1, 2007.*

1 8. Defendants are taking no action on Plaintiff's case in spite of the fact that almost two
2 years have passed since Plaintiff was fingerprinted and since Plaintiff had his
3 naturalization interview.

4 9. Plaintiff has exhausted his administrative remedies.

5 10. Defendants' refusal to act in this case is, as a matter of law, arbitrary and not in
6 accordance with the law.

7 11. Plaintiff has been, and continues to be, greatly damaged by the failure of Defendants to
8 act in accord with their duties under the law.

9 12. The Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. 701 et seq.
10 are unlawfully withholding or unreasonably delaying action on Plaintiff's naturalization
11 application and have failed to carry out the adjudicative and administrative functions
12 delegated to them by law and regulation.

13 WHEREOF, Plaintiff prays:

14 A. That the Defendants be ordered to have their agents process this case to a conclusion,

15 B. For reasonable attorneys fees, and

16 C. For such other and further relief as to this Court may seem proper.

17 Dated: 01/15/2008

/s/

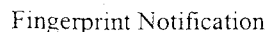
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19
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21 Bernadette W. Connolly
22 Law Offices of Bernadette W. Connolly
23 Attorney for Plaintiff
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25
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GROUP EXHIBIT A



Receipt with Exception			NOTICE DATE November 24, 2005
CASE TYPE N400 Application For Naturalization			INS A# A 047 525 375
APPLICATION NUMBER WSC*001410910	RECEIVED DATE November 16, 2005	PRIORITY DATE November 16, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS ERNST KATCHOUR 287 A QUINN HILL RD LOS ALTOS CA 94024		PAYMENT INFORMATION: Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	
<p>llllllllllllllllll</p> <p>The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):</p> <p>Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.</p> <p>Our records indicate your personal information is as follows:</p> <p>Date of Birth: November 23, 1966 Address Where You Live: 287 A QUINN HILL RD LOS ALTOS CA 94024</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 365 days of this notice.</p> <p>IMPORTANT NOTICE: All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE CALIFORNIA SERVICE CENTER P.O BOX 10400 LAGUNA NIGUEL CA 92607-</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>APPLICANT COPY</p> <p>WSCS001516129</p> 			



CASE TYPE

N400 Application For Naturalization

APPLICATION NUMBER

WSC*001410910

RECEIVED DATE _____

RECEIVED DATE
November 16, 2005

PRIORITY DATE

PRIORITY DATE
November 16, 2005

PAGE

1 of 1

APPLICANT NAME AND MAILING ADDRESS

ERNST KATCHOUR
287 A QUINN HILL RD
LOS ALTOS CA 94024

Abstract

To process your application, INS must take your fingerprints and have them cleared by the FBI. **PLEASE APPEAR AT THE BELOW APPLICATION SUPPORT CENTER AT THE DATE AND TIME SPECIFIED.** If you are unable to do so, complete the bottom of this notice and return the entire original notice to the address below. **RESCHEDULING YOUR APPOINTMENT WILL DELAY YOUR APPLICATION. IF YOU FAIL TO APPEAR AS SCHEDULED BELOW OR FAIL TO REQUEST RESCHEDULING, YOUR APPLICATION WILL BE CONSIDERED ABANDONED.**

APPLICATION SUPPORT CENTER

INS SAN JOSE
122 CHARCOT AVE.
SAN JOSE CA 95131

DATE AND TIME OF APPOINTMENT _____

02/03/2006
10:00 AM

WHEN YOU GO TO THE APPLICATION SUPPORT CENTER TO HAVE YOUR FINGERPRINTS TAKEN, YOU MUST BRING:

- 1. THIS APPOINTMENT NOTICE and**
2. PHOTO IDENTIFICATION. Naturalization applicants must bring their Alien Registration Card. All other applicants must bring a passport, driver's license, national ID, military ID, or State-issued photo ID. If you appear without proper identification, you will not be fingerprinted.

PLEASE DISREGARD THIS NOTICE IF YOUR APPLICATION HAS ALREADY BEEN GRANTED.

REQUEST FOR RESCHEDULING

Please reschedule my appointment for the next available: ☐ Wednesday afternoon ☐ Saturday afternoon

INS cannot guarantee the day preferred, but will do so to the extent possible.

Upon receipt of your request, you will be provided a new appointment notice. Please mail your request to:

INS SAN JOSE
122 CHARCOT AVE.
SAN JOSE CA 95131

If you have any questions regarding this notice, please call 1-800-375-5283.

APPLICANT COPY

APPLICATION NUMBER

WSC*001410910



WARNING!

Due to limited seating availability in our lobby areas, only persons who are necessary to assist with transportation or completing the fingerprint worksheet should accompany you.

U.S. Department of Homeland Security
Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 47 525 375

1867 Monterey Hwy
San Jose, 95112

On April 10, 2006, you were interviewed by USCIS Officer Q.H. Nguyen

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the test of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak / _____ read / _____ write English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on the Form N-14.
- ☒ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability / _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. USCIS will send you a written decision about your application.

A) **Congratulations! Your application has been recommended for approval.** At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) **A decision cannot yet be made about your application.**

Fin name check pending

It is very important that you:

- ☒ Notify USCIS if you change your address.
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.

Call Services (800) 375-5283

236 = 2
972 = 2

U.S. Department of Homeland Security
USCIS
1887 Monterey Road
San Jose, CA 95112



**U.S. Citizenship
and Immigration
Services**

Wednesday, January 17, 2007

ERNST KATCHOUR
287-A QUINN HILL RD.
LOS ALTOS CA 94024

Dear Ernst Katchour:

On 01/16/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	The applicant
Attorney Name:	Information not available
Case type:	N400
Filing date:	Information not available
Receipt #:	WSC*001410910
Beneficiary (if you filed for someone else):	Katchour, Ernst
Your USCIS Account Number (A-number):	Information not available
Type of service requested:	Case Status - Outside Processing Time

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

To serve you more efficiently we are replying to your letter by this informal method enabling a more prompt response. We trust you will agree that a faster response is more important than formality. No record has been made of this correspondence and should you write again concerning the same matter, please return the attached correspondence.

Alien Number: 047-525-375

**Ernst Katchour
287-A Quinnhill Rd
Los Altos, Calif. 94024**

Date: January 18, 2007

Dear Applicant:

The processing of your cases has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your name check remains open.

Until the name checks investigation is complete, we cannot move forward on your case. These name checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on the case as soon as the name check is complete. Unfortunately, the USCIS has no control over the FBI name check and we apologize for the delay. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number (1-800-375-5283)

Sincerely,
Information Unit/MEB
Citizenship & Immigration Services
1887 Monterey Rd
San Jose CA 95112

M-180 (Rev. 01-01-06)

United States Senate

WASHINGTON, DC 20510-0504

<http://feinstein.senate.gov>

October 1, 2007

Mr. Ernst Katchour
287-A Quinnhill Road
Los Altos, California 94024

Dear Mr. Katchour:

The Federal Bureau of Investigation has told me your name check, received on December 7, 2005, is still pending. There is no way to determine when the name check will be completed. If you haven't heard about the status of your case from USCIS within six months, please contact our office and we will make a follow up inquiry.

I hope that this information is helpful and that it will clarify the situation for you. If you have further questions, or if there is any way the Senator's office can help you in the future on other federal matters, I hope you will contact us again.

Sincerely,



Morgan Galli
Constituent Services Representative